

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:)	Confirmation No. 3588
Stefan HOFMAIR et al.)	
Serial No. 10/581,482)	Examiner: Peter Y. CHOI
Filed: March 21, 2007)	Group Art Unit: 1786
International Filing Date: November 24, 2004)	
For: TEXTILE LABEL AND METHOD FOR)	
THE PRODUCTION THEREOF)	Date: July 22, 2011

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTORY COMMENTS

This is an appeal brief filed pursuant to the Notice of Appeal filed May 17, 2011, to the Notice of Panel Decision from Pre-Appeal Brief Review dated June 22, 2011, and to the final Office Action dated February 17, 2011, in which claims 1, 3-7 and 10-16 are rejected in the above-identified application.

I. REAL PARTY OF INTEREST

The real party of interest is the assignee of record: Schreiner Group GmbH and Co. KG (Oberschleissheim, GERMANY).

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

A. Status of Claims in Proceeding

Claims 1, 3-7 and 10-16 are currently pending in the application. Claims 2 and 8-9 having been cancelled, and claims 17-24 having been withdrawn as being drawn to a non-elected invention.

B. Identification of Appealed Claims

Claims 1, 3-7 and 10-16 are being appealed. A copy of all of the pending claims as presented in the last entered amendment dated December 3, 2010 is included in the attached Appendix I.

IV. STATUS OF AMENDMENTS

There are no pending amendments of the claims. The last amendment was filed on December 3, 2010 of which entry was acknowledged in the Final Office action dated February 17, 2011.

Claims 1, 3-7, 10-16 and 17-24 are pending, of which claims 17-24 have been withdrawn from consideration.

V. SUMMARY OF CLAIMED SUBJECT MATTER

For the purposes of appeal, the rejection of claims 1, 3-7 and 10-16 is appealed. The dependent claims do not stand or fall together with their respective independent claim.

Claim 1 is directed to a textile label comprising a textile base layer (e.g., 2, Figs. 1b, 2b, 3b, 4 and 5, page 7, line 23), a transponder arrangement including a chip (e.g., 5, Figs. 1a, 2a, 2b, 3a, 3b, 4 and 5, page 7, line 24) and an antenna (e.g., 6, Figs. 1b, 2b, 3b, 4 and 5, page 7, line 24), the transponder arrangement being bonded to the textile base layer by a first adhesive layer (e.g., 3, Figs. 1b, 2b, 3b, 4 and 5, page 7, line 26), a second adhesive layer (e.g., 4, Figs. 1b, 2b, 3b, 4 and 5, page 8, line 15), and an additional textile layer including an upper label (e.g., 7, Figs. 2b, 3b, 4 and 5, 2nd line from the bottom of page 8) bonded to the remainder of the label by the second adhesive layer (4), wherein the chip is covered by the second adhesive layer (Figs. 1b, 2b, 3b, 4 and 5, page 8, lines 15-20) and is sealed by the second adhesive layer (4) against environmental influences including one of water, suds, chemical cleaning agents and heat by the second adhesive layer (Figs. 1b, 2b, 3b, 4 and 5, page 8, lines 15-20), and the antenna (6) is sealed against the environmental influences by the first adhesive layer (3) and the second adhesive layer (4) (e.g., Figs. 1b, 2b, 3b, 4 and 5).

Claim 3 is directed to the textile label according to claim 1, wherein the second adhesive layer (4) extends over the entire transponder arrangement in a plane fashion (e.g., Figs. 1b, 2b, 3b, 4 and 5, page 8, lines 15-20).

Claim 4 is directed to the textile label according to claim 1, wherein the first adhesive layer (3) consists of a polyester adhesive (page 7, line 27).

Claim 5 is directed to the textile label according to claim 1, wherein the second adhesive layer consists of a hot-melt adhesive (page 8, lines 17-18).

Claim 6 is directed to the textile label according to claim 1, wherein the antenna consists at least predominantly of copper (page 8, line 17).

Claim 7 is directed to the textile label according to claim 1, wherein the base layer (2) features at least one of the group including graphic and alphanumeric symbols (page 7, lines 21-23 and paragraph bridging pages 8-9).

Claim 10 is directed to the textile label according to claim 1, wherein the upper label (7) features at least one of the group including graphic and alphanumeric symbols (page 9, lines 11-12).

Claim 11 is directed to the textile label according to claim 1, wherein the upper label (7) protrudes over the base layer (2) on at least one side (e.g., paragraph bridging pages 8-9).

Claim 12 is directed to the textile label according to claim 11, wherein at least a portion of the region (e.g., 8, 8a in Figs. 3, 4 and 5) of the upper label that protrudes over the base layer can be separated from the remainder of the label (e.g., paragraph bridging pages 9-10).

Claim 13 is directed to the textile label according to one of claim 11, wherein the region (e.g., 8, 8a in Figs. 3, 4 and 5) of the upper label that protrudes over the base layer (2) is sewn to a garment (page 9, lines 13-27)

Claim 14 is directed to the textile label according to one of claim 11, wherein the region (e.g., 8, 8a in Figs. 3, 4 and 5) of the upper label that protrudes over the base layer (2) is bonded to a garment (page 8, lines 26-30 and paragraph bridging page 8-9).

Claim 15 is directed to the textile label according to claim 1, wherein the additional textile layer (7) includes part of a garment.

Claim 16 is directed to a garment featuring a label according to claim 1.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 3-5, 7, 10, 15 and 16 stand finally rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Baldwin (US 5,982,284 – hereinafter Baldwin) in view of Taylor (US 4,626,311 – hereinafter Taylor).

2. Claims 6, and 11-14 stand finally rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Baldwin and Taylor and further in view of Tirkkonen (WO 01/75843).

VII. ARGUMENT

As discussed in detail below, the basis for the rejection of claims 1, 3-5, 7, 10, 15 and 16 does not amount to a case of *prima facie* obviousness for the combination of subject matter recited in the rejected claims.

Further, the basis for the rejection of claims 6 and 11-14 does not amount to a case of *prima facie* obviousness for the combination of subject matter recited in the rejected claims.

Therefore reversal of the rejections of claims 1, 3-7 and 10-16 is respectfully requested.

1. Claim Rejection under 35 U.S.C. §103(a) over Baldwin and Taylor

Claims 1, 3-5, 7, 10, 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Baldwin and further in view of Taylor.

A. Pertinent Law

MPEP 2142, citing Court text from KSR, states, "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

B. Baldwin and Taylor do not render claims 1, 3-5, 7, 10, 15 and 16 obvious

Reversal of the rejection of 1, 3-5, 7, 10, 15 and 16 is respectfully requested on the basis that Baldwin and Taylor, combined or separately, fail to teach, disclose,

or suggest every limitation of the bank note processing machine according to independent claim 1 and its dependent claims 3-5, 7, 10, 15 and 16.

Initially, Appellant respectfully notes that, in applying Baldwin, the Examiner repeated fails to be diligent in pointing out which specific features in Baldwin correspond specifically to Appellant's claimed features. Although the Examiner cites numerous drawing figures and long textual descriptions in Baldwin to support the rejections, the Examiner has not provided specific concrete support or showing of direct correlation for each of the features that Examiner deems as relevant to Appellant's claimed invention. Therefore, Appellant respectfully submits that the final Office Action, as well as the rejections therein, is incomplete at least because of the lack of specificity as to how and which features of Baldwin are relevant to each and every claimed feature in the presently claimed invention for the record.

Claim 1 of the present application is directed to a textile label having a textile base layer (e.g., 2), a transponder arrangement including a chip (e.g., 5) and an antenna (e.g., 6) bonded to the textile base layer (2) by a first adhesive layer (e.g., 3), a second adhesive layer (e.g., 4), and an additional textile layer including an upper label (e.g., 7) bonded to the remainder of the label by the second adhesive layer (4), wherein the chip (5) is covered and sealed by the second adhesive layer (4), and wherein the antenna is sealed against environmental influences by the first and second adhesive layers (3, 4). According to the embodiment recited in claim 1 of the present invention, the chip (5) is in direct contact the second adhesive layer (4), since the transponder arrangement according to the present invention has no housing or the like surrounding the chip and antenna.

In contrast, according to Baldwin, the transponder is laminated between two insulation sheets of paper 12 and 36, as described in column 3, lines 16 and 17. Further, as shown in Fig. 4 of Baldwin, there is an adhesive-free region formed of an adhesive-deadening material 50 sandwiched between adhesive layer 18 and the chip 52 so as to create the essential air gap or air pocket 35 while antenna 53 has an adhesive-free region 54. Hence, Appellant's claimed textile label having chip (5)

covered by the second adhesive layer (4) and antenna (6) and which lacks an adhesive-free region or an air gap is clearly different from Baldwin.

Moreover, according to Baldwin, an air gap 35 is provided around the perimeter of the RFID chip which eliminates the wrinkle that would otherwise be created by the edge of the RFID chip, as described in column 2, lines 44 to 46. This air gap is mandatory in Baldwin so as to render the RFID chip as less recognizable as possible. Therefore, the RFID chip in accordance with Baldwin's description with the air gap 35 clearly include features that would lead one of ordinary skill away from Appellant's claimed features wherein the chip is covered by the second adhesive layer (4) and is sealed by the second adhesive layer (4). That is, Appellant's claimed invention does not include an air gap and adhesive-free region as Baldwin does.

Further, while Baldwin utilizes sheets 12 and 16 made of paper, Appellant's invention of a textile label includes a textile base layer (2) and additional textile layer including an upper label (7). In applying Baldwin, Examiner contends that paper sheets (e.g., 12 and 16) are within the scope of Appellant's textile base layer and the additional textile layer. In response, Appellant respectfully submits that the paper sheets of Baldwin may not have tear-resistant properties. To remedy this weakness, Baldwin teaches the use of tear resistant layer 32 between paper sheet 36 and the antenna 53. Appellant notes that the paper sheet 12 of Baldwin is not directly covered by any tear-resistant layer, however. Accordingly, in view of the clear usage of paper material in Baldwin, Appellant respectfully submits that Baldwin's sheets of paper does not suggest a textile and cannot be construed as textile in the sense of Appellant's claimed invention.

With respect to Taylor, the reference does not cure the above-mentioned deficiencies of Baldwin, and there is no suggestion or motivation to combine the features of Taylor with the laminated tag/label of Baldwin.

Specifically, Taylor teaches an inner member of device 22 being an elongate strip 24 of magnetically detectable material. The magnetically detectable strip 24 is

encapsulated in a fluid-tight manner (col. 3, lines 47-50) by a cover member 25 made of a thermoplastic material. The anti-theft device 22 is attachable to a cloth product. Hence, similar to Baldwin, Taylor fails to teach, disclose or suggest at least a textile base layer and an additional textile layer. Moreover, Taylor does not appear to teach, disclose or suggest a chip and antenna transponder arrangement.

Appellant respectfully submits that the elongated magnetically detectable material encapsulated in a thermoplastic cover member 25 to form a fluid-tight device teaches away from a textile label of Appellant's claimed invention because of the lack of a textile base layer and an additional textile layer. Further, because of the inflexible and bulky nature of the anti-theft device 22, one skilled in the art would not consider combining the anti-theft device 22 of Taylor with the flexible, thin laminated tag or label of Baldwin as contended by the Examiner.

Accordingly, since Taylor fails to cure the deficiencies of Baldwin, and since each of Baldwin and Taylor fails to teach, disclose or suggest each and every claimed feature of independent claim 1, reversal of the rejection of claim 1, as naturally its respective dependent claims 3-5, 7, 10, 15 and 16, is respectfully requested.

Notwithstanding Appellant's traversal of the rejection of independent claim 1 above, claim 3, for example, further distinguishes from the cited prior art. The Examiner citing Figs. 1-4 of Baldwin alleges that Baldwin teaches that the second adhesive layer extends over the entire transponder arrangement in a plane fashion. However, without any specificity provided by the Examiner, Appellant assumes paper layer 12, adhesive layer 18 and adhesive layer 32 of Baldwin respectively correspond to the textile base layer (2), the first adhesive layer (3) and the second adhesive layer (4) of the present invention. However, Appellant's second adhesive layer (4) further distinguishes from the adhesive layer 32 of Baldwin at least because the adhesive layer 32 of Baldwin does not extend over chip 52 and antenna 53 in a plane fashion. That is, the adhesive layer 32 of Baldwin has a curved profile (i.e., convex shape – as shown in Figs. 1, 3 and 4) that accommodates the depth or height of the chip 52 and the antenna 53 covering the chip 52.

With respect to claim 10, although the Examiner alleges that Baldwin discloses an "upper label", which is equivalent to the upper label (7) of the presently claimed invention. However, none of the drawings in Baldwin show a label attached to the paper sheet 12 (i.e., "textile base layer").

In view of the arguments set forth above, which clearly point out the deficiencies in both Baldwin and Taylor, Appellant respectfully submits that the Examiner has failed to provide clear articulation of the reason(s) why the claimed invention would have been obvious. Further, as there is a lack of specificity in the rejection and how/which each particular feature of Baldwin is respectively relevant to each of Appellant's claimed features, the rejection is further unclear in its reasoning to support the Examiner's conclusion of obviousness.

2. Claim Rejection under 35 U.S.C. §103(a) over Baldwin and Taylor in further view of Tirkkonen

Claims 6, and 11-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Baldwin and Taylor and further in view of Tirkkonen.

A. Pertinent Law

MPEP 2142, citing Court text from KSR, states, "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

B. Baldwin, Taylor and Tirkkonen do not render claims 6, and 11-14 obvious

Reversal of the rejection of 6, and 11-14 is respectfully requested on the basis that Baldwin, Taylor and Tirkkonen, combined or separately, fail to teach, disclose, or suggest every limitation of the textile label according to claim 1, as discussed above, and its dependent claims 6 and 11-14.

With respect to claim 6, the Examiner contends that Baldwin fails to teach a foil antenna consists at least predominantly copper, and that Tirkkonen cures the deficiency of Baldwin by teaching a radio frequency identification device formed from copper wire, citing page 1, line 1 to page 4, line 20, page 4, line 36 to page 8, line 13, and Figs. 1-8.

In response, Appellant respectfully submits that the Tirkkonen patent does not deal with the sealing of a chip within a label, much less with the sealing with two adhesive layers. There is simply no suggestion to a person of ordinary skill in the art for sealing a transponder arrangement by means of two adhesive layers, wherein the chip is covered by the second adhesive layer and is sealed by the second adhesive layer against environmental influences including one of water, suds, chemical cleaning agents and heat by the second adhesive layer, and the antenna being sealed against the environmental influences by the first and the second adhesive layer, as recited in claim 1.

Moreover, Tirkkonen describes a smart label which may be attached to a textile material. The label comprises a chip 2 fixed to the label 1 with an adhesive layer 3 and a back film 4 (see Figure 2 and page 5, lines 20-26). As described on page 4, line 37 to page 5, line 5, an electroconductive ink is printed on the back film or a metal film is etched or punched to manufacture the antenna of the smart label. Therefore, the use of a foil is mandatory in combination with a label according to Tirkkonen. However, a substitution of such a foil with a textile layer is not suggested.

Further, manufacture of the antenna of the chip as disclosed by Tirkkonen would not be realizable if a textile label were to be disposed as the back film, since electroconductive ink could not be printed on a textile label so as to form an antenna for a RFID chip. Thus, Tirkkonen would appear to teach away from use of a textile upper label as recited in claim 1. Accordingly, one skilled in the art would not be motivated to combine Tirkkonen with Baldwin and Taylor.

With respect to claims 11-14, the Examiner cites Figs. 1-8, page 1, line 1 to page 4, line 20, page 4, line 36 to page 8, line 13 of Tirkkonen as showing at “least a portion of a textile layer protrudes over the remaining portion of the layer as shown in Figs. 5-7 of Tirkkonen...”. The Examiner then concludes that it would have been obvious to combine this feature with Baldwin and Taylor to arrive at Appellant’s invention in claims 11-14. However, Tirkkonen discloses a smart label 1 with a chip 2 covered by an adhesive layer 3 and a back film 4 or a leather layer 6. Hence, the back film 4 or the leather layer 6 appears to be equivalent to Appellant’s textile base layer (2), and the adhesive layer 3 of Tirkkonen appears to be equivalent to Appellant’s first adhesive layer (3). However, there is no second adhesive layer or upper label can be found in Tirkkonen. Accordingly, it logically follows that Tirkkonen does not teach disclose or suggest a portion of the region of the upper label that protrudes over the base layer as recited in each of claims 11-14.

In view of the arguments set forth above, which clearly point out the deficiencies in Tirkkonen, even if Tirkkonen were combined with Baldwin and Taylor, the combination of the references still fail to include all of the claimed features recited in independent claim 1 and its dependent claims 6 and 11-14. Further, Appellant respectfully submits that the Examiner has failed to provide clear articulation of the reason(s) why the claimed invention would have been obvious. Further, as there is a lack of specificity in the rejection and how/which each particular feature of Tirkkonen is respectively relevant to each of Appellant’s claimed features, the rejection is further unclear in its reasoning to support the Examiner’s conclusion of obviousness.

VIII. Conclusion

For the reasons set forth above, claims 1, 3-7 and 10-16 of the pending application define subject matter that is not obvious under 35 U.S.C. § 103(a) in view of the Baldwin, Taylor and Tirkkonen references. Accordingly, reversal of the rejections of claims 1, 3-7 and 10-16 is respectfully requested.

Further, while no fees are believed to be due, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4525 (001800-68).

Respectfully submitted,

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IX. CLAIMS APPENDIX

1. (Previously Presented) A textile label comprising:

- a textile base layer,
- a transponder arrangement including a chip and an antenna, the transponder arrangement being bonded to the textile base layer by a first adhesive layer,
- a second adhesive layer, and
- an additional textile layer including an upper label bonded to the remainder of the label by the second adhesive layer,

wherein the chip is covered by the second adhesive layer and is sealed by the second adhesive layer against environmental influences including one of water, suds, chemical cleaning agents and heat by the second adhesive layer, and

the antenna is sealed against the environmental influences by the first and the second adhesive layer.

2. (Cancelled)

3. (Previously Presented) The textile label according to claim 1, wherein the second adhesive layer extends over the entire transponder arrangement in a plane fashion.

4. (Previously Presented) The textile label according to claim 1, wherein the first adhesive layer consists of a polyester adhesive.

5. (Previously Presented) The textile label according to claim 1, wherein the second adhesive layer consists of a hot-melt adhesive.

6. (Previously Presented) The textile label according to claim 1, wherein the antenna consists at least predominantly of copper.

7. (Previously Presented) The textile label according to claim 1, wherein the base layer features at least one of the group including graphic and alphanumeric symbols.

8.-9. (Cancelled)

10. (Previously Presented) The textile label according to claim 1, wherein the upper label features at least one of the group including graphic and alphanumeric symbols.

11. (Previously Presented) The textile label according to claim 1, wherein the upper label protrudes over the base layer on at least one side.

12. (Previously Presented) The textile label according to claim 11, wherein at least a portion of the region of the upper label that protrudes over the base layer can be separated from the remainder of the label.

13. (Previously Presented) The textile label according to one of claim 11, wherein the region of the upper label that protrudes over the base layer is sewn to a garment.

14. (Previously Presented) The textile label according to one of claim 11, wherein the region of the upper label that protrudes over the base layer is bonded to a garment.

15. (Previously Presented) The textile label according to claim 1, wherein the additional textile layer includes part of a garment.

16. (Previously Presented) A garment featuring a label according to claim 1.

17. (Withdrawn) A method for manufacturing a textile label comprising at least the following steps

- applying a first adhesive layer (3) on a textile base layer (2),
- attaching a transponder arrangement featuring an antenna (6) and at least one additional electronic component (5) to the first adhesive layer (3) and

- applying a second adhesive layer (4) such that it covers and seals at least the additional electronic component (5).

18. (Withdrawn) The method according to claim 17, wherein the second adhesive layer (4) is applied such that it covers the entire transponder arrangement.

19. (Withdrawn) The method according to claim 17, wherein the attachment of the transponder arrangement consists of bonding on a metal foil section and subsequently etching the antenna (6) out of the metal foil section.

20. (Withdrawn) The method according to claim 19, wherein a metal foil section is used that predominantly consists of copper.

21. (Withdrawn) The method according to claims 17, wherein the first adhesive layer (3) is produced with polyester adhesive.

22. (Withdrawn) The method according to claims 17, wherein the second adhesive layer (4) is produced with hot-melt adhesive.

23. (Withdrawn) The method according to one of claims 17, wherein the bonding to an additional textile layer is realized with the aid of the second adhesive layer (4).

24. (Withdrawn) A method for labeling a garment, wherein a label according to claims 1, is attached to a garment by one of the group of procedures consisting of sewing and bonding.

X. EVIDENCE APPENDIX

There are no copies of evidence entered and relied upon in this appeal
of the pending application.

XI. RELATED PROCEEDINGS APPENDIX

There are no related proceedings or decisions rendered by a court or the Board of Appeals in any proceeding identified in the related appeals and interferences section in the pending application.